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# Maximizing Contract Goal Credit for MWSBE Utilization

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# Overview of Presentation



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# Minority, Women and Small Business Enterprise (MWSBE) Program



# MWSBE Program



- Governed by City of Houston Code of Ordinances, Chapter 15, Article V.
- Express purpose is to promote the growth and success of MWSBEs.
- Goal-oriented contracts – a way to increase participation of MWSBEs.
- Based on past disparity studies – Program is an effort to remedy discriminatory practices and eliminate statistical disparities in city contracting.
- Goals are not quotas. The standard for meeting goals is demonstrating good faith efforts.



# MWSBE Program



- Contract goals are based on divisibility of the work required under the contract and the availability of MWSBEs to perform the work.
- Use of suppliers on construction contracts is limited to 50% of total MWSBE goal.
  - Suppliers alone do not stimulate growth among MWSBE's, therefore a limit is required to achieve the program's goal.
- Final MWSBE participation % is based on total amount paid to the prime.
  - i.e. If a contract award is \$2M and the total spend is \$1M then the 24% goal assessment is on the total spend of \$1M.





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# Commercially Useful Function



# Commercially Useful Function (CUF)

**An MWSBE performs a commercially useful function when it is responsible for a discrete task or group of tasks required in the contract using its own forces or by actively supervising on-site the execution of tasks. An MWSBE has to be certified in the NAICS code in which they are performing.**

- Prime Contractors only get goal credit when an MWSBE performs a commercially useful function.
- Do not confuse commercially useful function with certification.
- A CUF audit seeks to determine the appropriate credit for work performed by listed MWSBE as well as reduce fraud.





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# Goal Credit for Subcontractors, Truckers and Suppliers





# Full Goal Credit For MWSBEs



## **Subcontractors/Manufacturers**

- Perform specific work items with its own forces pursuant to a contract agreement with Prime.

## **Truckers**

- Use their own trucks and trucks owned and operated by other MWSBEs.
- For each truck the MWSBE firm owns and operates, that firm may receive credit for an equal number of trucks used on the project owned by a non-certified firm.



# Full Goal Credit For Certified Subcontractors

- MWSBEs that perform work they are certified for by the City.
- MWSBEs that perform work with their own crew.
- MWSBEs that subcontract their work to other MWSBEs.
- MWSBEs that purchase materials and install with their own workforce.



# Full Goal Credit For Certified Truckers

- MWSBEs that use their own company trucks and employees on the project.
- MWSBEs that use equal number of their trucks and Owner Operators or use other non-certified firms. i.e. 1:1 ratio
- MWSBEs that use other MWSBE trucking firms to assist on project.



# Full Goal Credit for Certified Suppliers

On City of Houston funded projects, suppliers that provide materials and supplies directly to the project will receive full credit if they meet all of the following requirements\*:

- I. Negotiate price;
- II. Determine quality and quantity;
- III. Order the materials;
- IV. Show that the invoice is in the certified firm's name;
- V. Pay for the material;
- VI. Control delivery; and
- VII. Be certified to provide the supplies in the appropriate NAICS code

If a supplier does not perform all of these functions then the Prime cannot receive full credit for their work.

**\*Revised Spring 2015. Applies to all contracts that are not closed out.**



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# Partial Goal Credit



## Subcontractors

- MWSBEs who use lower tiered non-certified firms to do the work will result in a reduction of credit to Prime.
- Prime will only receive credit for money retained by MWSBE.

## Trucking

- MWSBEs who use non-certified firms to do the work if 1:1 ratio is exceeded.
- MWSBE who hires all non-certified Owner-Operators for trucking.

## Suppliers

- Suppliers who fail to meet all 7 criteria.

For all categories, partial credit will equal the fees and commission earned as long as appropriate documentation is provided.





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# **MWSBE Utilization Schedules & Deviations**

# MWSBE Utilization Schedule



The MWSBE Utilization Schedule is a forecast of the Prime's use of MWSBE firms to meet the MWSBE goal on projects.\*

- The schedule must be submitted before you start work and upon request.
- An updated copy of the Prime's MWSBE Utilization Schedule is also required when responding to a "Not Meeting the Goal" letter.

**\* MWSBE Utilization Schedule is not applicable to work order contracts**



# MWSBE Utilization Schedule



MWSDBE Utilization Schedule



Status as of: Jan-16  
 Project Name: Construction Project  
 WBS Number: (enter WBS number)  
 Company Name: PRIME

Month	Total	SUB 1	SUB 2	SUB 3	
Jun-16	\$46,835	\$46,835	\$0	\$0	\$0
Jul-16	\$61,675	\$51,175	\$10,500	\$0	\$0
Aug-16	\$23,400	\$0	\$23,400	\$0	\$0
Sep-16	\$21,000	\$0	\$21,000	\$0	\$0
Oct-16	\$37,600	\$0	\$24,600	\$13,000	\$0
Nov-16	\$37,056	\$0	\$25,500	\$11,556	\$0
Dec-16	\$18,272	\$0	\$0	\$18,272	\$0
\$	\$245,838	\$98,010	\$105,000	\$42,828	\$0
%	24.58%	9.80%	10.50%	4.28%	0.00%

Contract Amount: \$1,000,000  
 Goal % 24.00%  
 Projected Goal% 24.58%  
 Goal \$ \$240,000  
 Project Goal \$ \$245,838

\*\*\*Note: Actual dollar amounts are assumed if the date is in the past, otherwise numbers reflect projected dollar amounts.



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# Deviation Requests





- Work designated in your approved MWSBE participation plan cannot be completed by any other subcontractor, trucker, supplier or yourself as the Prime unless you receive permission from OBO first.
- If you need to make any changes to your participation plan, adding or removing an MWSBE, you **must** first submit a deviation request using the online deviation form or a letter stating your proposed change and why it is necessary.
- OBO will provide a written response/determination to you regarding your request.
- Subcontracting agreements with approved added MWSBEs are required within 14 days of approval.



# Deviation Requests



This form can be found at [www.houstontx.gov/obo](http://www.houstontx.gov/obo). Click on “Forms and Documents.”

	<b>City of Houston Office of Business Opportunity DEVIATION REQUEST</b>	
<b>To: The Office of Business Opportunity (OBO) Director</b>		
Date: _____		
Prime Contractor: _____		
Project Description: _____		
Contract Number: _____		
COH Project Manager: _____		
OBO Compliance Officer: _____		
Submitted By (Name and Title): _____		
Company Mailing Address: _____		
City: _____	State: _____	Zip code: _____
Contact Phone Number: _____		
Name of MWSBE Requested to Add		Name of MWSBE Requested to Delete
_____		_____
List subcontractors below that will be used as supplier or manufacturer on this contract. (Please note that no more than 50% of the MWSBE goal can be satisfied using suppliers).		
_____		
_____		
Summarize why you are requesting a change to your MWSBE participation plan.		
_____		
_____		
What work will the proposed goal credit participant(s) be performing and the estimated payment to each of them?		
_____		
_____		
Will the proposed goal credit participant(s) be performing work already assigned to another goal credit participant? <input type="radio"/> Yes <input type="radio"/> No		
If so, please list the goal credit participant(s) that were assigned the work originally.		
_____		
When will the proposed goal credit participant(s) start working and have you executed a subcontracting agreement with them? (A Copy of the executed agreement must be provided to OBO within 14 days of approval of the deviation request).		
_____		
_____		
Signature: _____		
Email to: <a href="mailto:morris.scott2@houstontx.gov">morris.scott2@houstontx.gov</a>		
THIS FORM IS NOT TO BE USED FOR FEDERALLY FUNDED CONTRACTS		





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# Tips to Maximize Goal Achievement



# Tips to Maximize Goal Achievement

- Establish relationships with MWSBEs in advance.
- Subdivide the work.
- Use the City of Houston's MWSBE Certified Firm Directory to find firms.
- Directly solicit to MWSBEs in a timely manner.
- Provide relevant bidding/contract information to MWSBE Firms.
- Advertise opportunities.
- Go back to MWSBEs that you've done business with in the past and ask them to bid.



# Tips to Maximize Goal Achievement

- Mentor MWSBEs.
- Solicit MWSBEs when additional work is added.
- Look for MWSBEs when you lose or need to remove a non-certified firm.
- Review what opportunities exist before submitting your bid.
- On Bid documents, be certain as to the amount of goal credit the MWSBE will provide:
  - Ask if they have enough trucks if using truckers.
  - Ask will they be using Owner Operators or other non-certified firms.
  - Ask Suppliers if they meet the 7-point CUF criteria.
- Once you know you have a goal problem, contact OBO for guidance.





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# Post-Award Good Faith Efforts



# What are Good Faith Efforts?



Good Faith Efforts are steps taken to achieve a Contract Goal which, by their scope, intensity and usefulness, demonstrates the Prime's responsiveness to fulfill the business opportunity objective when bidding on a contract **as well as the contractor's responsibility to put forth measures to meet or exceed the Contract Goal** throughout the duration of the contract.

In other words, EVIDENCE of a genuine attempt to meet the Contract Goal.



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# Good Faith Efforts



- If the Prime fails to achieve the MWSBE goal, the Prime must demonstrate that their failure to do so was based on circumstances that they could not reasonably control.
- The City's *Good Faith Efforts Policy* outlines those factors that will be considered in the assessment of good faith efforts at the end of the contract. *See Document 808 for construction projects.*
- **Remember:** MWSBE goals are not quotas. The standard for meeting MWSBE goals is the demonstration of Good Faith Efforts.







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# Documenting Good Faith Efforts



# Documenting Good Faith Efforts



- Submit in writing all efforts made to comply with the goal(s).
- Execute and submit required subcontracting agreements outlining terms of engagement.
- Keep a log of efforts made throughout course of contract to meet goals.
- Contact OBO for assistance if you are experiencing challenges meeting your goal.
- When possible, provide subcontractors with advance notice when they will be needed for project.
- Document opportunities that exist with all additional work and your efforts to solicit MWSBEs.



# Documenting Good Faith Efforts



- Attach a value to additional opportunities that arise.
- Document MWSBEs you contact & their responses.
- After contract has been awarded, look for other MWSBEs to perform and request that their dollars be added for credit as backup.
- Ask your MWSBEs whether they will execute their work utilizing other subcontractors/truckers/suppliers.
- Make sure MWSBE firms are certified to perform the specific designated task.
- If truckers will not meet requirement for full credit, find out up front how much credit their work will result in.



# Documenting Good Faith Efforts



- Designate an MWSBE liaison officer.
- Provide up-to-date MWSBE Utilization Schedules and promptly upload payments to the B2G Now system.
- Genuinely attempt to resolve disputes with MWSBEs.
- Request a deviation when needed, and make good faith efforts to replace MWSBE firms with other MWSBE firms.
- Promptly respond to inquiries from the City regarding MWSBE participation for goal credit.



# Documenting Good Faith Efforts



- Utilize all MWSBEs on the approved participation plan unless a deviation is approved.
- Provide information that is factually accurate and free of material misrepresentation.
- Attend all meetings and mediations requested by the City.
- Notify OBO of the effect of scope of work changes on Participation Plan.

*\*\*City may consider other factors or types of relevant efforts in appropriate cases, as documented by Contractor.*





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# Failure to make Good Faith Efforts



# Common Observations: Failure to Make GFE

- Failure to respond to City inquiries (letters, email, calls) regarding MWSBE utilization.
- Failure to execute required subcontracting agreements outlining terms of engagement.
- Listing MWSBEs for goal credit without notifying them.
- Failure to submit deviation request for a change in MWSBE Participation Plan.
- Failure to fully report payments made to MWSBEs.
- Failure to request credit for other MWSBEs used.



# Common Observations: Failure to Make GFE

- Self performing work intended for MWSBEs, without approval.
- Failure to understand how MWSBEs will perform on the contract (no Commercially Useful Function or partial goal credit work).
- Failure to understand impact of MWSBEs subcontracting work to non-MWSBEs.
- Failure to notify MWSBEs and OBO promptly of any challenges that will affect MWSBE utilization.
- Failure to look for goal credit opportunities on additional work authorized.
- Failure to document changes that affect goal credit MWSBEs.







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# Final Contract Ratings



# Assessment of Good Faith Efforts



- Contractor's efforts to meet MWSBE contract goal(s) are assessed at the end of the project.
- Failure to make Good Faith Efforts will result in an "unsatisfactory" compliance rating.
- Good Faith Efforts begins when the project is awarded, so start documenting then.
- Submit all relevant documentation of your efforts to OBO at the end of the contract.
- Ratings are reviewed by City Council and the Mayor.
- Unsatisfactory ratings may impact award of future projects if a sanction is imposed.



# Contract Ratings For MWSBE Goal Compliance

- **Outstanding**
  - Exceeded Goal and Made Good Faith Efforts to Utilize Listed MWSBEs.
- **Satisfactory**
  - Met Listed Goal and Made Good Faith Efforts to Utilize Listed MWSBEs.
- **Unsatisfactory**
  - Failed to make Good Faith Efforts.

**\*Over the past 4 years, more than 90% of the closed contracts had outstanding or satisfactory ratings.**



# Challenging an “Unsatisfactory” Rating

- OBO evaluates MWSBE goal compliance before final clearance and the final payment request is made to City Council on all construction projects.
- After evaluation of Contractor’s Good Faith Efforts to meet the MWSBE goal, Contractors are notified of their compliance rating via letter.
- Contractors who don’t agree with their ratings have 14 calendar days to challenge them by contacting Morris Scott at 832-393-0631 or via email at [Morris.Scott2@houstontx.gov](mailto:Morris.Scott2@houstontx.gov) .
- OBO will review all explanations and documents submitted within that 14 day period, then notify Contractor of the final rating.
- **IMPORTANT:** The initial rating will become final if Contractor fails to challenge it within 14 calendar days.



# MWSBE Compliance Ratings



## Breakdown of Closed Construction Contracts with Goals from FY2012-FY2015

MWSBE Ratings*		
Outstanding	172	55%
Satisfactory	124	39%
Unsatisfactory	20	6%
<b>Grand Total</b>	<b>316</b>	<b>100%</b>

- Of the 20 unsatisfactory contracts, only 2 Contractors had more than 1 unsatisfactory rating.

\*Does not include HAS contracts.





# Questions?

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# Thank You.

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